

FILED

JAN 28 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MIKE WEST

Plaintiff,

v.

SCOTT ELROD, M.D., and
WESTERN MONTANA MENTAL
HEALTH CENTER,

Defendants.

CV 11-129-M-DWM-JCL

ORDER

Scott Elrod, M.D., and Western Montana Mental Health Center move for summary judgment. Mike West is a prisoner proceeding pro se and in forma pauperis. He claims that Dr. Elrod prescribed him medication that has caused adverse side effects. Judge Lynch issued Findings and Recommendations recommending that summary judgment be granted in favor of Dr. Elrod and the Mental Health Center. West does not object to that recommendation, and the Court adopts it in full.

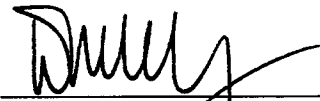
The parties are entitled to a de novo review of the specified findings or recommendations to which they timely objected. 28 U.S.C. § 636(b)(1). But the portions of Judge Lynch's Findings and Recommendations not specifically objected to are reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

There is no clear error in Judge Lynch's Findings and Recommendation. West did not file a brief in opposition to the defendants' motion for summary judgment. His failure to do so is "deemed an admission that the motion is well-taken." Local Rule 7.1(d)(1)(B). And, as to the merits of this case, neither Dr. Elrod nor the Mental Health Center are state actors, so 42 U.S.C. § 1983 does not apply. *Caviness v. Horizon Community Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010) (citations omitted). There are no facts that would show whether this private action qualifies as state action. *See Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003). As a result, dismissal is appropriate.

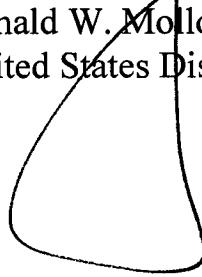
IT IS ORDERED that Judge Lynch's Findings and Recommendations (doc. 34) is ADOPTED IN FULL. The defendants' motion for summary judgment (doc. 29) is GRANTED. This case is DISMISSED.

IT IS FURTHER ORDERED that the Clerk of Court is directed to close this case and enter judgment in favor of the defendants.

Dated this 28th day of January 2013.

A handwritten signature in black ink, appearing to read "Molloy", written over a horizontal line.

Donald W. Molloy, District Judge
United States District Court

A large, stylized handwritten mark or flourish, possibly a large "D" or a loop, drawn in black ink below the signature line.